

# ***Partition!***

New Developments in Partition Law  
AB 633 – Uniform Partition of Heirs Property Act (2022), and  
AB 2245 – Partition of Real Property Act (2023)



**Skye Langs**

[slangs@coblentzlaw.com](mailto:slangs@coblentzlaw.com)

415.772.5785



**David ("Duff") Beach**

[dbeach@coblentzlaw.com](mailto:dbeach@coblentzlaw.com)

415.772.5708

Coblentz  
Patch Duffy  
& Bass LLP

# *Partition!*

---

1. Partition Basics
2. Pre-Amendment Law
3. Uniform Partition of Heirs Property Act (2022)
4. Leveling the Playing Field: Partition of Real Property Act (2023)
5. Unanswered Questions
6. Takeaways and Best Practices
7. Questions—hopefully answered

# Partition Basics

---

- Jointly Held Property (Joint Tenancy or Tenancy in Common)
- “A co-owner of property has an absolute right to partition unless barred by a valid waiver.” *Orien v. Lutz* (2017) 16 Cal.App.5<sup>th</sup> 957, 962
- Three methods of Partition
  1. Partition in Kind: divide into individual, fractional interests
  2. Partition by Appraisal: appraise and sell
  3. Partition by Judgment: requires judicial action
- Judicial and Statutory preference for partition in kind

# Pre-Amendment Partition Law

---

- 1977 Statute: nominally still favored partition in kind, but
- Courts would order a sale where
  1. Division into subparcels of equal value is impossible
  2. Division of the land would substantially diminish the value of each party's interest

*See Butte Creek Island Ranch* (1982) 136 Cal.App. 3d 360, 367

- One party could force a sale
  1. Which could be through a court-ordered action, rather than on the market
  2. No first right of refusal

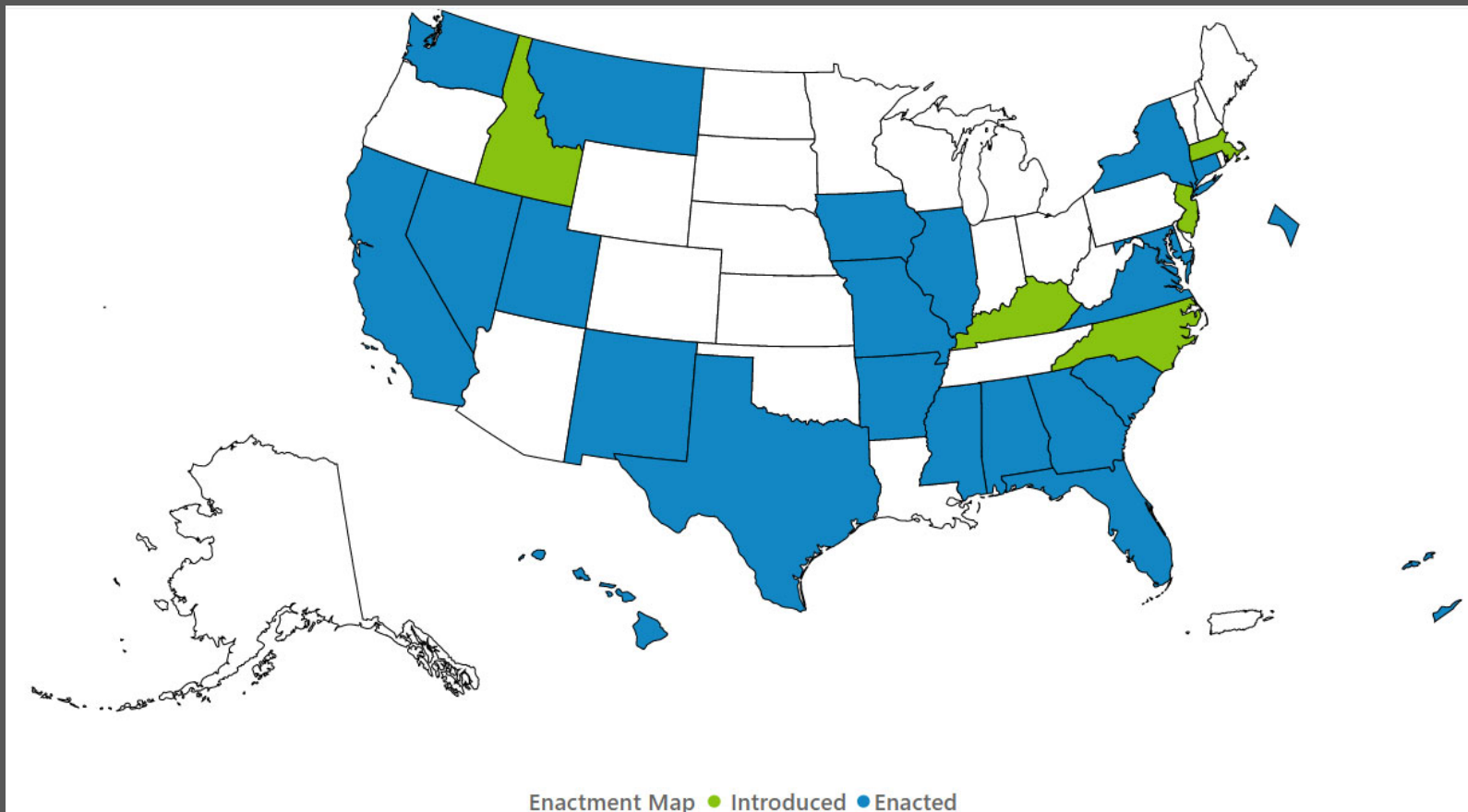
# Uniform Partition of Heirs Property Act (2022)

---

## The Basics of the UPHPA (AB 633):

- “The Uniform Partition of **Heirs** Property Act”
- Applied to partition actions filed after January 1, 2022 (but only until December 31, 2022, see AB 2245)
- Only applied to properties in which inheritance led to joint ownership
  - Intended to protect the interests of people who inherited jointly owned property
- Based on the model Uniform Partition of Heirs Property Act
  - CCP § 874.322: Courts may consider how other states have applied/construed the uniform act to “promote uniformity of the law”

# Implementation of the UPHPA



# Why the UHPHA?

---

A history of unscrupulous investors taking advantage of partition law to prey on family inheritance

- Inherited jointly held property can become highly fragmented
- One owner may sell their interest to non-family member
- No matter their interest, the non-family member can force a partition
- Forced sales result in below-market prices
- Disproportionate impact on disadvantaged/lower income communities with less access to estate planning and legal representation

# Who the UPHPA applies to (slide 1 of 2)

---

## *Heirs Property* (§ 874.312(e))

### a) Must be TIC

#### ➤ Why own TIC property?

- Inheritance/Divorce
- Purchased together (as unmarried couples, business partners)
- Purchase individual units rather than condos (Common in SF, growing in LA)

### b) No written agreement regarding partition of property

### c) One or more cotenants acquired property from relative

- i. Living or deceased
- ii. Broadly defined: “ascendant, descendant, or collateral or otherwise related to another individual by blood, marriage, adoption, or state law...”
- iii. No limitation as to how acquired from the relative

#### ➤ Property held in trust does not qualify. See *Best v. Best*, 2023 WL 2621227 at \*1 (Cal. Super.) (Los Angeles)



## Who the UHPHA applies to (slide 2 of 2)

---

### d) Specific level of ownership by heirs:

- Intended to capture majority of situations where inheritance/family ownership causes fractured ownership
  - i. 20%+ of interests (not % of land) held by cotenants who are relatives
    - Example: one owner owns 85% of acreage, but the remaining 15% of acreage divided into multiple interests, each held by a relative = Heirs Property.
  - ii. 20%+ of interests (not % of land) held by individuals who acquired title from a relative
  - iii. 20%+ of cotenants are relatives

# Leveling the Playing Field: Partition of Real Property Act (2023)

---

## The Basics of the PRPA (AB 2245):

1. Expanded the UHPA procedural protections to apply to **any** TIC with no written agreement regarding partition
2. Applies to partition actions filed after January 1, 2023
  - Legislature noted an expansion of multi-family units converted into TICs and owned by unrelated owners
  - Legislature determined UHPA procedures work better for all co-owners facing partition
3. Repealed reliance on other state's decisions (intended to “promote uniformity of the law”)

# UPHPA/PRPA Procedural Safeguards (slide 1 of 5)

---

## 1. Before merits decision on partition, court determines FMV (§ 874.316)

- By agreement, including where all cotenants agree to value or method of valuation (§ 874.316(b))
  - beware of unintended consequences
- Or by Appraisal and Evidentiary Hearing (§ 874.316(d))\*
  - Court appoints a real estate appraiser
  - Appraiser must be disinterested and licensed in California
  - Appraisal must assume sole ownership of the fee simple estate

\* Appraisal will occur only if the court determines the cost of an appraisal is justified by its evidentiary value. (§ 874.316(c))

# Procedural Safeguards (slide 2 of 5)

---

## Process following appraisal (§ 874.316(d))

- Appraiser files a “sworn and verified appraisal”
- Appraisal is available for review through the Court clerk
- The court notifies the parties of the appraised value within **10 days**
- A party has **30 days** to file a written objection
- The court conducts an evidentiary hearing to determine the FMV, and may consider “any other evidence of value” that a party offers
- The court rules on the FMV and notifies the parties *before* considering the merits of the partition action

# Procedural Safeguards (slide 3 of 5)

---

## 2. Right of First Refusal (§ 874.317)

- Any (or all) cotenant(s) has **45 days** from notice of the FMV to buy out cotenants who wish to sell
  - Except the cotenant that requested partition by sale
- The cotenant(s) must offer to buy *all* interests for sale
- Purchase price is the fractional interest in the property's FMV
- If multiple cotenants elect to purchase, the court allocates the available interests pro rata based on their current ownership interests
- If there is no buyer, the court proceeds to a merits determination

# Procedural Safeguards (slide 4 of 5)

---

## 2. Right of First Refusal (cont.)

- If there are buyers the court will set a payment date at least **60 days** after the cotenants are notified of the sale (*i.e.*, at least 105 days after the FMV determination)
- If some, but not all, purchasing cotenants make payment, the participating buyers can purchase the remaining shares
  - If more than one cotenant seeks to purchase the remaining shares, the court allocates the shares based on their original ownership interest
- If a remaining share remains unpurchased, the buyout fails, and the court proceeds to a merits determination re. partition in kind or sale
- If a noticed party does not appear in the action, within **45 days** of the court's notice of the FMV, a cotenant make a motion to the court to sell that defaulting party's interest
  - Court has discretion to grant/deny the motion; only after the initial sale process is complete

# Procedural Safeguards (slide 5 of 5)

---

## 3. Merits Determination (§ 874.318-19)

- *Compare* the UHPA preference for partition in kind, unless doing so results in “great prejudice to the cotenants as a group”
- *to* Partition in kind in the absence of proof that under the circumstances, sale would be “more equitable” than division (*Butte Creek Island Ranch*, 136 Cal.App.3d at 365)
- The Court evaluates prejudice using a seven-factor test, including personal, sentimental, and other non-monetary factors

# Seven-Factor Merits Test

---

1. Whether the property can be practically divided
  2. Whether partition in kind would materially reduces FMV of the property as a whole
  3. The collective duration of ownership by any cotenant or their predecessors and whether the cotenants are or were relatives
  4. A cotenant's sentimental attachment to the property, including "ancestral or other unique or special value"
  5. The use for the property, and the degree of harm to a cotenant if discontinued
  6. The cotenant's contributions to expenses for the property
  7. "Any other relevant factor"
- Critically, **no factor** is dispositive without weighing the "totality of all relevant factors and circumstances" (§ 874.319(b))



# When to order a sale?

---

If partition in kind will result in **great prejudice**, the court orders a sale

- Must be on the open market, unless the court finds sealed bids or auction would be more economically advantageous
- If the parties cannot agree on a licensed real estate broker, the court will appoint a disinterested one at a “reasonable commission”
- Broker offers the property in the open market “in a commercially reasonable manner” for a price no lower than the FMV the court determined
- Any cotenant, *including one that initiated the action*, may purchase the property. A cotenant may apply their share as an offset to the purchase price

# Conditions of a Sale

---

## 1. Offers at or above FMV?

- Broker files report with court including names of buyers, proposed price, terms (including financing), amounts paid to lienholders, broker's commission, and other material facts

## 2. No offer at FMV?

- Court may approve highest offer
- Revisit FMV and order additional sale at lower price
  - Cotenants **do not** have a renewed right to buyout shares at lower price, but may negotiate a settlement agreement
- Court may order sale by sealed bid or auction

# Other UPHPA/PRPA Changes

---

- Service by publication must include “conspicuous sign” on the property for the duration of the litigation (§ 874.314)
- A court-appointed referee must be disinterested, impartial, and not a party or participant (§ 874.315)
- Court may apportion the costs and appraisal fee, but may not apportion costs of partition to any party that opposed the action, unless “equitable and consistent with the purposes of this chapter” (§ 874.321.5)
- Note that the amendments are supplemental of existing law. Look to Title 10.5 for issues not covered by UPHPA/PRPA

# Key Differences from Pre-Amendment Law

1. PRPA only applies to TICs without written, binding agreements regarding partition
2. PRPA differs from partition by appraisal (§§ 873.910-.980)

Partition by Appraisal	UPHPA / Partition of Real Property Act
Requires agreement by all parties.	Does not require agreement. Cotenant has a right to buy out, at the appraised value, the cotenant that wishes to sell.
Court must approve the agreement and ensure that its terms are equitable.	Court supervises the sale of interests to other cotenants. Procedures to ensure price is fair, and gives all remaining cotenants an opportunity to participate in the purchase.
Agreement to purchase is made before appraisal.	Purchase decision comes after appraisal.
Form of appraisal is specified by statute.	Cotenants may agree on the value without appraisal, or agree on an alternative method for determining value.

# Key Differences from Pre-Amendment Law

---

- 3. Strengthens preference for partition in kind
- 4. Differs from non-TIC partition by sale

Non-TIC Partition by Sale	PRPA Partition by Sale
No right of first refusal	Sale only after remaining cotenants refuse buyout
May order sale if “under the circumstances...[it] would be more equitable than division of the property.” (CCP § 872.820(b))	Strong preference for partition in kind unless “would result in great prejudice to the cotenants as a group”
May be sold at public auction or private sale; Court may prescribe manner, terms, and conditions of sale	Statute provides for sale on the open market. Other forms of sale allowed if open market sale fails

# Unanswered Questions

---

- Joint Tenants' Property?
- About that 7-factor test...
- For urban TICs, sale still appears to be the most likely outcome of a dispute; courts have limited available remedies

# Takeaways and Best Practices

---

- TICs remain an unstable form of property ownership. Owners need a clear, written agreement governing sale/partition, and should waive right to partition
- The PRPA as a model for agreements between owners (time to revisit older TIC agreements?)
- Draft Trust language and create estate plans to address future TIC partition issues
- Joint owners may be able to implement the PRPA's process without court involvement, saving time and money
- Parties need to bring the PRPA's changes to the Court's attention
- Partitions by sale likely to remain common



(Questions)